No. 22,664

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

WALTER C. GATES, d.b.a. GATES CABINETS,

Plaintiff-Appellant

v.

UNITED STATES OF AMERICA,

Defendant

ON APPEAL FROM THE JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA

BRIEF FOR THE APPELLEE

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BRIEF FOR THE APPELLEE

STATEMENT OF THE ISSUE PRESENTED

Whether taxpayer, after failing to designate the manner in which he wanted his partial payments of an excise tax assessment to be allocated, may nevertheless later require the Commissioner to alter his usual method of allocation.

STATEMENT OF THE CASE

This appeal presents a question as to the correct amount of a refund of the federal manufacturer's excise taxes due taxpayer. The period involved is the five quarters ended from April 30, 1960

through June 30, 1961. Taxpayer filed a claim for refund according to law (R. 7, 67-68) which was not paid (R. 4, 13). On November 18, 1966, taxpayer filed a timely complaint for refund of excise taxes erroneously assessed and paid. (R. 1, 2-5.) On December 29, 1967, the District Court found that taxpayer was entitled to a refund of $5,940.27 and accordingly entered judgment. (R. 1, 52.) The amended findings of fact and conclusions of law were entered February 7, 1968 (R. 1, 67-72) and are not officially reported. Within 60 days after entry of judgment, taxpayer filed a notice of appeal. (R. 65.) Jurisdiction is conferred on this Court by 28 U.S.C., Section 1291.

Taxpayer is an individual residing in Los Angeles County, California, doing business under the name of Gates Cabinets. Between April, 1960 and June, 1961, taxpayer manufactured units known as "pickup coaches" and "truck accessories."[1/] In this connection, the Commissioner issued four excise tax assessments against taxpayer as follows (R. 69):

Assessment No.	Date of Assessment	Tax	Additions to Tax	Total
11-352033-61L	11-9-61	$22,147.82	$5,609.81	$27,757.63
J-11-460-61L	11-17-61	5,090.19	429.30	5,519.49
2-34110-62L	3-9-62	2,941.34	- 0 -	2,941.34
5-341280-62L	6-8-62	1,916.29	- 0 -	1,916.29
				$38,134.75

The latter three assessments were fully satisfied. The correctness of the Commissioner's determination with respect to them is not at

1/ Two of taxpayer's products are involved in this appeal. The greater portion of the sales during the relevant period were of "camper bodies," a body which resembles a house trailer but which is designed to be mounted in the bed of pickup trucks. The other product was a "camper top", a one-piece top used to cover the camper bodies or to enclose the bed of a pickup truck. (Report of Revenue Agent, Deft's Ex. B., p. 3.)

issue in view of the taxpayer's failure to file timely claims for refund. (R. 27, 70.)[2/]

This appeal involves only the assessment of November 9, 1961, on which taxpayer paid, by installments, $15,117.94. Of this amount, $3,117.94 was paid before February 16, 1964 (two years prior to the filing of the claim for refund), and is therefore not within the statutory period for tax refunds. (R. 71.)[3/] Taxpayer did not accompany his payments on the assessment in issue with any instructions as to their allocation. Nor did he at any time, prior to the institution of this action in the District Court, communicate his desires to the Internal Revenue Service as to how such payments were to be applied. (R. 68.)

The Commissioner subsequently determined that the correct tax liability pursuant to Section 4061(b) of the 1954 Code for the period covering the assessment at issue was in the amount of $6,371.52. This figure represents the sum of $4,043.52 for Section 4061(b) tax liability, $773.27 for delinquency penalty, $33.54 for

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2/ Taxpayer filed a second cause of action based upon these assessments (R. 4-5) but in view of his failure to file claims for refund, the District Court was without jurisdiction and thereby dismissed this claim (R. 27-28). Taxpayer does not challenge the correctness of the District Court's dismissal of his second cause of action in his brief before this Court and we consider the issue abandoned.

3/ See Section 6511(b)(2)(B), Internal Revenue Code of 1954. The maximum claim possibly allowable is the difference between $15,117.94 and $3,117.94, or $12,000.

depository receipt penalty and $1,521.19 for interest. (R. 70.)[4/] The Commissioner then determined, after making an adjustment increasing the refund by that portion of the barred payments which were allocated to the tax actually payable, that taxpayer was entitled to a refund of $5,940.27. This amount was computed as follows (R. 71):

Total payments on Account No. 11-352033-61L	$ 15,117.94
Less: Payments made prior to February 16, 1964 and not within the statutory period	3,117.94
Tax paid and considered as claimed	$ 12,000.00
Less: Correct tax liability	6,371.52
Refund before adjustment	$ 5,628.48
Plus: Portion of the barred payments allocated to correct tax liability	311.79
Total amount refundable	$ 5,940.27

This refund was calculated by the Commissioner in conformity with his stated position in Rev. Rul. 58-239, 1958-1 Cum. Bull. 94, Appendix, infra. (R. 71.)

The District Court held that taxpayer was entitled to a refund of $5,940.27, as determined by the Commissioner. (R. 72.) Taxpayer thereafter prosecuted the instant appeal. (R. 65.)

4/ This redetermination of the correct tax liability was prompted by a change in position by the Commissioner with respect to the taxation of the camper bodies. At the time that the assessment at issue was made, the Commissioner's position was that the camper bodies were truck accessories taxable under Section 4061(a). See Rev. Rul. 60-39, 1960-1 Cum. Bull. 406. However, after unsuccessful litigation, the Commissioner subsequently decided that these camper bodies were not truck accessories. King Trailer Co. v. United States, 350 F. 2d 947 (C.A. 9th); Rev. Rul. 66-163, 1966-1 Cum. Bull. 252. Accordingly, the correct tax liability figure arises solely from the imposition of the eight percent tax upon taxpayer's manufacture of the camper tops. (Deft's Ex. B, pp. 6-7.)

ARGUMENT

TAXPAYER CANNOT LATER REQUIRE THE COMMISSIONER TO ALTER HIS USUAL METHOD OF ALLOCATION BECAUSE HE FAILED TO DESIGNATE THE MANNER IN WHICH HE WANTED HIS PARTIAL PAYMENTS OF AN EXCISE ASSESSMENT TO BE ALLOCATED

A. Introduction

The sole issue presented on this appeal is the correct amount of the excise tax refund due taxpayer for the period at issue covering the five quarters ended April 30, 1960 to June 30, 1961. The Commissioner's original assessment covering this period was in the amount of $27,757.63 and taxpayer made partial payments thereon totaling $15,117.94. (R. 70.) In view of the fact that only $12,000 of these payments were made within two years of February 17, 1966, the date upon which taxpayer filed his claim for refund (R. 67-68), that is the maximum amount placed at issue in this case. See Section 6511(b)(2)(B), Internal Revenue Code of 1954, Appendix, infra.

Pursuant to the policy promulgated in Rev. Rul. 66-163, supra, wherein the Commissioner decided not to impose Section 4061(a) tax upon the sale of camper bodies, taxpayer's liability for the period at issue was redetermined to be $6,371.52. (R. 70.)[5/] In order to arrive at the correct amount of the refund due taxpayer, the Commissioner subtracted this amount of the correct tax liability ($6,371.52) from the maximum amount possibly refundable ($12,000)

5/ Taxpayer acknowledges (Br. 3) that this figure represents the correct amount of the excise tax liability for the period at issue.

and added an allocable portion of the payments barred by the statute of limitations to the correct tax liability ($311.79). As computed by the Commissioner, the correct amount of the refund to which taxpayer was entitled was therefore $5,940.27. (R. 71.)

The District Court approved this method of computation and entered judgment for taxpayer in the above amount.[6/] It found that taxpayer failed to designate the manner in which he wanted his partial payments allocated (R. 68) and that the Government, in computing the amount refundable, applied the partial payments made by taxpayer in a manner consistent with Internal Revenue Service policy, as contained in Rev. Rul. 58-239, 1958-1 Cum. Bull. 94, Appendix, infra (R. 71). It is the Government's contention that the District Court was correct and should be affirmed.

B. The District Court correctly found that the amount refundable to taxpayer was computed in a manner consistent with Rev. Rul. 58-239

The rule has long been settled that a debtor who makes a payment on a debt has a right, if he so chooses, to direct its appropriation and, if he fails to do so, the right devolves upon the creditor. Nat. Bank, etc. v. Mechanics' Nat. Bank, 94 U.S. 437; United States v. January, 7 Cranch 572; United States v. Kirkpatrick, 9 Wheat. 720; Field v. Holland, 6 Cranch 8. Similarly, this general principle has been held to apply to debts owing for federal taxes. Hewitt v. United States, 377 F. 2d 921, 925 (C.A. 5th); Datlof v.

6/ Since the amount of the District Court's judgment reflects the tax due as $6,371.52, the amount conceded by the Commissioner, the Government did not institute an appeal.

United States, 370 F. 2d 655, 658-659 (C.A. 3d), certiorari denied, 387 U.S. 906.

Pursuant to this general power in the Commissioner to allocate partial payments in the absence of directions from the taxpayer, Rev. Rul. 58-239, supra, was promulgated. It provides for a specific method of allocation to be used by the Commissioner when the taxpayer fails to instruct any allocation. The relevant portion of this ruling states as follows (1958-1 Cum. Bull. 94, 95):

> Where an assessment is made for one or more years and there are no specific instructions as to the application of the partial payment tendered by the taxpayer, the amount of the payment will be applied by the District Director first to tax, penalty and interest, in that order, for the earliest year, then to tax, penalty and interest, in that order, for the next succeeding year, until the payment is absorbed.

Since taxpayer satisfied the three other assessments in full, the only assessment at issue is Account No. 11-352033-61L for $27,757.63, upon which he paid $15,117.94. With respect to this latter amount, it is clear that taxpayer failed to communicate any instructions to the Internal Revenue Service as to how he wanted these payments allocated. Accordingly, the procedure as set forth above was followed and the payments were allocated first to tax, penalty and interest, in that order, for the earliest tax period within the assessment (the quarter ended April 30, 1960), and then to each succeeding quarter. Absent any allocation requested by taxpayer, the $3,117.94 paid prior to February 16, 1964, must be regarded as satisfying pro rata both the Section 4061(a) and 4061(b) taxes. As a result, the only effect which the $3,117.94 amount paid

outside the statute of limitations can have upon taxpayer's refund is the part of this sum attributable to Section 4061(b) taxes, namely, $311.79. The remainder of this sum was properly allocable to the Section 4061(a) taxes and cannot be recovered because of the bar of the statute of limitations.

In approving this mode of allocation, the Tax Court observed in Keith v. Commissioner, 35 T.C. 1130, 1139, that in the absence of any instructions from taxpayer, "an established procedure should be followed" and that this allocation procedure was promulgated "in the interest of an orderly and equitable procedure for the application of such payments." See also Marcus v. Commissioner, decided August 4, 1964 (P-H Memo T.C., par. 64,206). While taxpayer could have possibly secured a larger refund by specifically instructing the Internal Revenue Service to allocate his payments to the Section 4061(b) taxes, he did not do so. Consequently, the rule of Rev. Rul. 58-239, supra, requires the simple chronological allocation made by the Commissioner.

Taxpayer does not dispute the validity or applicability of the principle of Rev. Rul. 58-239, supra. Rather, he appears to contend (Br. 4-6) that the Commissioner's policy of allocation as enunciated in that ruling requires a refund of $12,000, the maximum amount available under the statute of limitations. Taxpayer's reasoning is as follows: of the total amount paid to the Government on all four assessments ($25,495.06), an amount equal to the correct tax liability ($6,371.52) was paid within two years of the filing of the claim for

refund. From this fact, taxpayer concludes that the entire $12,000 represents an excessive payment by him and should be refunded.

The fallacy of this argument is that it rests upon two false assumptions, namely, (1) that the payments made on the three other assessments not involved herein should be considered as having been made on the assessment at issue; and (2) that the payments made on the assessment at issue should have been allocated first to the Section 4061(b) tax, the statutory provision upon which the correct tax liability is based. We submit that neither of these assumptions can be sustained.

C. Taxpayer cannot now reallocate the payments made on the three assessments not at issue to the single assessment at issue because such an allocation would circumvent the statute of limitations

Taxpayer's argument for the maximum refund of $12,000 involves a reallocation of payments he initially made to satisfy fully the three smaller assessments which are not at issue. In so contending, he completely ignores the fact that the payments made on those other assessments are barred by the statute of limitations because of his failure to file timely claims for refund.[7/] Indeed, the cause of action relating to these assessments was dismissed by the District Court for that very reason. (R. 27-28.) Consequently, the amounts paid on the three other assessments are not at issue and cannot be considered on appeal. Since taxpayer cannot directly recover the

7/ Had taxpayer fully paid and filed a timely claim for refund on any of the transactions taxed in one of the assessments, he could have tested the validity of all of the Commissioner's assessments. See Flora v. United States, 362 U.S. 145, 171 n. 37, 175 n. 38; Compton v. United States, 334 F. 2d 212, 215 n. 6 (C.A. 4th).

sums paid on the three other assessments, it would be plainly contrary to the intendment of the statute of limitations for him to be able to shift the payments made on these closed assessments to the single open assessment at issue so as to derive benefit from time-barred payments. Taxpayer should not be able to accomplish indirectly what he could not do directly because of the statute of limitations and the correlative jurisdictional requirement of a timely claim for refund. See Section 7422(a) of the 1954 Code. His failure to preserve his rights as to the three later assessments is completely dispositive of his contention. In this connection, it should be noted that the Commissioner has squarely ruled to this effect. Rev. Rul. 57-73, 1957-1 Cum. Bull. 612.

In any event, there is no basis in this record for any argument that Rev. Rul. 58-239, supra, required an allocation by the Commissioner of any of the payments made on the three assessments not at issue to the single assessment which is at issue. Although the three other assessments covered periods subsequent to the period covered in the single assessment, taxpayer paid in full two of the three other assessments (in the amounts of $2,941.34 and $1,916.29) together with his submission of the returns. (Compl. Ex. F, R. 11; Deft's Ex. A.) By submitting full payment with the returns relevant to these two assessments, it is clear that taxpayer wanted the Internal Revenue Service to allocate these accompanying payments to these assessments. Surely this act of full payment was an explicit instruction to the Commissioner to satisfy the particular liabilities represented on the submitted returns. Upon receipt of such an instruction, the Commissioner correctly satisfied these assessments.

With respect to the remaining assessment in the amount of $5,519.49, taxpayer paid this sum in installments. (Deft's Ex. A.) Although the record does not disclose any specific directions communicated by taxpayer as to the allocation of these payments, such an allocation would not have been made to an assessment covering a later period, absent a request by taxpayer. While the record is silent on this point, it should be noted that it is the prescribed practice of the Internal Revenue Service to transmit a statement on a standard form (TY 54) to a taxpayer who submits a part payment. This form acknowledges receipt of the payment and indicates the account to which it has been credited. It is therefore clear that taxpayer, who undoubtedly received this form, was aware that some of his payments were being credited to the account bearing the total liability of $5,519.49. Receipt by taxpayer of such forms, coupled with his failure to request an alternative allocation, clearly constitutes an acquiescence to the Commissioner's allocation. This is essentially equivalent to an agreement or a specific instruction to that effect.

Moreover, taxpayer has not shown anything which would indicate that he ever objected to the Commissioner's allocation or that he requested a contrary allocation on this assessment. Taxpayer cannot now, with the benefit of hindsight, reallocate these payments to achieve a larger refund on the assessment at issue. Accordingly, there is no merit to the contention that the principle of Rev. Rul. 58-239, supra, requires a reallocation of taxpayer's payments on the three smaller assessments not at issue to the single assessment which is at issue. Rather, the record strongly demonstrates the correctness of the District Court's finding (R. 71) that taxpayer's refund was computed in a manner consistent with this ruling.

D. Taxpayer cannot now reallocate the payments made on the single assessment in issue so as first to satisfy the Section 4061(b) liability

Taxpayer's second assumption upon which his argument rests is that the Commissioner should have allocated the payments made on the assessment at issue first to Section 4061(b) tax and then to the Section 4061(a) tax. Focusing only on the single assessment at issue, the effect of taxpayer's reallocation would be to regard the entire $15,117.94 paid as first satisfying the Section 4061(b) liability, which is in the amount of $6,371.52. The end result of this argument appears to urge a refund of $8,746.42, the difference between the above two figures.

As we have pointed out supra, taxpayer did not request the Internal Revenue Service to make such an allocation within the assessment at issue. Consequently, the procedure of Rev. Rul. 58-239, supra, calling for chronological allocation of the payments was properly employed. The effect of such an allocation was that the payments were apportioned between the taxes imposed by both subsections (a) and (b) of Section 4061 for each particular period in chronological order. To the extent that part of these payments made more than two years prior to the filing of a claim was correctly allocated to Section 4061(a) taxes, the statute of limitations bars their recovery. Rev. Rul. 57-73, supra.

In arguing for an allocation of the payments first to the Section 4061(b) tax, taxpayer emphasizes (Br. 3) that this imposition was the only tax which was "legally due." Again, however, such a contention is grounded upon the benefit of hindsight. It

must be emphasized that at the time that the Commissioner was satisfying this assessment with taxpayer's part payments, he had not yet changed his position on the applicability of Section 4061(a) to taxpayer's camper bodies. Since these taxes were at that time fully applicable, the Commissioner was therefore under no obligation (absent instructions from taxpayer) to satisfy the Section 4061(b) taxes first. Hence, the contention that no amount of the payments on the assessment in issue could be allocated to the Section 4061(a) liability because those taxes were not "legally due" is entirely without merit. On the contrary, at the time of payment the Section 4061(a) excises were clearly due--and without any specific instruction to the contrary, proportionate parts of taxpayer's payments properly went to satisfy the liabilities imposed by both subsections (a) and (b) of Section 4061. To the extent he did not preserve his rights to the Section 4061(a) payments either by filing timely claims for refund[8/] or by allocating his part payments first to the Section 4061(b) liability, taxpayer cannot recover the amount of the Section 4061(a) taxes paid outside the two-year statute of limitations.[9/]

8/ See footnote 7, supra.

9/ None of the authorities cited by taxpayer lend any support for the allocation which he urges. To the extent that Pine Hill Crystal Spring Water Co. v. United States, 121 F. Supp. 480 (S.D. N.Y.) suggests that the tax paid within the limitations period represents a maximum amount recoverable rather than the maximum sum placed at issue, from which the tax due must be subtracted, the decision turned on the reciprocal relationship between the excess profits and income taxes and is therefore distinguishable.

In sum, taxpayer's arguments for reallocation of his partial payments are directly contrary to both the bar of the statute of limitations[10/] and the principle of Rev. Rul. 58-239, supra, that in the absence of any instruction the Commissioner will allocate a part payment on an assessment to the earliest tax due. The principle of this ruling represents a reasonable administrative solution by the Commissioner to a problem which plainly requires an established procedure. Generally, allocation of part payments first to the earliest period will provide for the maximum extension of the statute of limitations. That such allocation reduced taxpayer's refund in this instance is merely indicative of the fact that an automatic rule cannot, by its very nature, be responsive to all cases. It does not, we submit, diminish the utility of the rule itself. Finally, it is clear that taxpayer had it within his power to suspend the operation of the Commissioner's allocation rule by designating an alternative allocation. His original failure to do so cannot be remedied at this stage of the proceeding. The District Court therefore correctly rejected taxpayer's attempts to reallocate his partial payments after the fact. Accordingly, the amount of his refund for the single assessment at issue cannot exceed the sum determined by the Commissioner and approved by the District Court as having been computed in a manner consistent with Rev. Rul. 58-238, supra, namely, $5,940.27.

10/ It is beyond question that the bar of the statute of limitations is essential to an orderly administration of the taxing statutes. As the Supreme Court noted in Rothensies v. Electric Battery Co., 329 U.S. 296, 301: " *** a statute of limitation is an almost indispensable element of fairness as well as of practical administration of an income tax policy."

CONCLUSION

For the foregoing reasons, the judgment of the District Court is correct and should be affirmed.

Respectfully submitted,

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JULY, 1968.

CERTIFICATE OF SERVICE

It is hereby certified that service of this brief has been made on opposing counsel by mailing four copies thereof on this 2nd day of July, 1968, in an envelope, with postage prepaid, properly addressed to him as follows:

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/s/ Loyal E. Kunzi
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APPENDIX

Internal Revenue Code of 1954:

SEC. 6511. LIMITATIONS ON CREDIT OR REFUND.

(a) Period of Limitation on Filing Claim.--Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. Claim for credit or refund of an overpayment of any tax imposed by this title which is required to be paid by means of a stamp shall be filed by the taxpayer within 3 years from the time the tax was paid.

(b) Limitation on Allowance of Credits and Refunds.--

(1) Filing of Claim Within Prescribed Period.--No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in subsection (a) for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period.

(2) Limit on Amount of Credit or Refund.--

(A) Limit where claim filed within 3-year period.--If the claim was filed by the taxpayer during the 3-year period prescribed in subsection (a), the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return. If the tax was required to be paid by means of a stamp, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim.

(B) Limit where claim not filed within 3-year period.--If the claim was not filed within such 3-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the 2 years immediately preceding the filing of the claim.

(C) Limit of no claim filed.--If no claim was filed, the credit or refund shall not exceed the amount which would be allowable under subparagraph (A) or (B), as the case may be, if claim was filed on the date the credit or refund is allowed.

* * * *

(26 U.S.C. 1964 ed., Sec. 6511.)

Rev. Rul. 58-239, 1958-1 Cum. Bull. 94:

To the extent that additional taxes, penalty and interest have been assessed for one or more years against a taxpayer whose income is reported on the cash method of accounting, a partial payment thereon tendered to the District Director of Internal Revenue and accepted by him with specific directions by the taxpayer as to its application will be applied, as a general rule, in accordance with such directions. Amounts tendered in partial payments of assessed deficiencies or deficiencies mutually agreed to as to amount of liability but unassessed at the time of tender, for one or more years, without instructions from the taxpayer, will be applied by the District Director first to tax, penalty and interest in that order, due for the earliest year, then to tax, penalty and interest for the next succeeding year until the payment is absorbed. Interest satisfied by such partial payments will be deductible for Federal income tax purposes for the year in which it is paid.

Advice has been requested relative to the application, by a District Director of Internal Revenue, of a partial payment of tax, penalty and interest, assessed for one or more years, made by a taxpayer regularly employing the cash receipts and disbursements method of accounting, and whether the interest, if any, satisfied by such partial payment is deductible for Federal income tax purposes in the year in which it is paid.

Where additional taxes, penalty and interest are assessed for one or more years against a taxpayer whose income is reported on the cash method of accounting, a partial payment thereon tendered to and accepted by the District Director of Internal Revenue with specific directions by the taxpayer as to its application, will be applied, as a general rule, in accordance with such directions. The amount of interest satisfied by such a partial payment will be deductible in computing taxable income for the year in which the payment is made.

Where an assessment is made for one or more years and there are no specific instructions as to the application of the partial payment tendered by the taxpayer, the amount of the payment will be applied by the District Director first to tax, penalty and interest, in that order, for the earliest year, then to tax, penalty and interest, in that order, for the next succeeding year, until the payment is absorbed. The portion of the payment applied to interest for any year will be deductible in computing taxable income for the year in which the partial payment is made.

Amounts tendered, in partial payment of deficiencies mutually agreed to as to the amount of liability but unassessed at the time of the tender, for one or more years, without instructions from the taxpayer, as to the application of the payment, will be applied by the District Director first to tax, penalty and interest, in that order, due for the earliest year, the interest to be computed under the applicable provisions of law, then to tax, penalty and interest, in that order, for the next succeeding year until the payment is absorbed. The deficiencies and interest will be immediately assessed and notice and demand issued for any unpaid tax and interest due for any year. The portion of the payment applied to interest for any year will be deductible in computing taxable income for the year in which the partial payment is made. However, where a lump sum is accepted in compromise of tax, penalty and interest, which sum is less than the principal amount of the tax and penalty claimed by the Government, no part of the amount of such compromise is deductible as interest.